

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BCO-099

No. 20-3401

In re: NFL Player's Concussion Injury Litigation

Kevin Henry, Najeh Davenport,  
Appellants

(E.D. Pa. No. 2-12-md-02323)

Present: AMBRO, SHWARTZ and PORTER, Circuit Judges

1. Clerk's Submission for Possible Dismissal Pursuant to Jurisdictional Defect.
2. Response filed by Appellees NFL and NFL Properties.
3. Response filed by Appellees Paul Raymond Turner and Shawn Wooden.
4. Response filed by Appellants Kevin Henry and Najeh Davenport.

Respectfully,  
Clerk/clw

ORDER

Class members Kevin Henry and Najeh Davenport appealed the district court's November 20, 2020 order denying their motion seeking relief from the class Settlement Agreement or, alternatively, under Fed. R. Civ. P. 60(b). The order denied the Appellants' motion without prejudice to raising it at a later time and specifically stated that Appellants have to "exhaust their remedies under the Claims Administration process" before petitioning the district court. Even though the concept of finality is not as strict in the post-judgment context as prior to judgment, see Ohntrup v. Firearms Ctr., Inc., 802 F.2d 676, 678 (3d Cir. 1986) (per curiam), the order is not appealable now. The District Court dismissed the motion without prejudice and its order indicates that it is not the final word on the subject of "race norming." See, e.g., Defense Distributed v. Attorney Gen. of N.J., 972 F.3d 193, 199 (3d Cir. 2020); Weber v. McGrogan, 939 F.3d 232, 237 (3d Cir. 2019). In addition, the district court does not address the merits of any Appellants' claims. Instead, the order directs the parties to fully complete the Claims Administration process as set forth in the Settlement Agreement before proceeding in the district court. Moreover, the order is not appealable as an injunction pursuant to 28 U.S.C. § 1292(a)(1) because the district court denied any possible injunctive relief

without prejudice See Defense Distributed, 972 F.3d at 199-200 (citations omitted).  
Because the order is not final or otherwise appealable, the appeal is hereby dismissed.

By the Court,

s/ David J. Porter

Circuit Judge

Dated: July 26, 2021

Lmr/cc: All Counsel of Record



A True Copy:

*Patricia S. Dodszeit*

Patricia S. Dodszeit, Clerk  
Certified Order Issued in Lieu of Mandate